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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,951	05/10/2006	Desuo Wang	USC-194-PCT-US	5136
22827	7590	01/11/2010	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449				STOCKTON, LAURA LYNNE
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/578,951	WANG ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Laura L. Stockton	1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 October 2009.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 46-83 is/are pending in the application.

4a) Of the above claim(s) 59-83 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 46-58 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

**DETAILED ACTION**

**Claims 46-83 are pending in the application.**

***Election/Restrictions***

During a telephone conversation with Dr. Marcia Greci on May 20, 2009, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-17 (drawn to products, now new claims 46-58). Claims 18-45 (Group II - drawn to methods of use, now new claims 59-83) were withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

The requirement is still deemed proper and is therefore made FINAL.

***Priority***

As a result of the amendments to the claims per the Amendment filed October 28, 2009, the disclosure of the

prior-filed application, Provisional Application No. 60/519,140 filed November 12, 2003 provides adequate support or enablement in the manner provided by the first paragraph of 35 U.S.C. 112 for the instant claimed invention.

**NOTE:** The provisos found in originally filed independent claim 1 and the instant specification are absent from the instant newly presented claims 46-58. However, since Provisional Application No. 60/519,140 was herein incorporated by reference (see page 1, paragraph [0001] of the instant specification), the newly presented claims are not deemed as adding new matter.

Rejections made in the previous Office Action that do not appear below have been overcome by Applicant's

amendments to the claims. Therefore, arguments pertaining to these rejections will not be addressed.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 46-58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 46, under the definition of R<sup>1</sup>, there are valence problems in the substituents CH<sub>2</sub>NCH<sub>3</sub> and CH<sub>2</sub>NCH<sub>2</sub>CH<sub>3</sub>. See claim 53 for same.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 46-49, 51, 52, 54 and 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by Johnson et al. {Journal of Pharmaceutical Sciences, August 1979, 68(8), pages 955-958}.

Johnson et al. disclose Compound VIId on page 955 and in Table II on page 957, which is embraced by the instant claimed invention. Therefore, Johnson et al. anticipate the instant claimed invention.

**NOTE:** The provisos found in originally filed independent claim 1 and the instant specification are absent from the instant newly presented claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 46-52 and 54-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al. {Journal of Pharmaceutical Sciences, August 1979, 68(8), pages **955-958**}.

***Determination of the scope and content of the prior art (MPEP §2141.01)***

Applicant claims pyrrole compounds. **Johnson et al. 955** (see entire document; particularly page 955; and especially Compound VII<sup>d</sup> in Scheme I on page 955 and in Table II on page 957) teach pyrrole compounds that are either structurally the same as (see above 102

rejection) or structurally similar to the instant claimed compounds.

***Ascertainment of the difference between the prior art and the claims***

***(MPEP S2141.02)***

The difference between some of the compounds found in the Johnson et al. and the compounds instantly claimed is that of homology (i.e., ethyl versus propyl at the instant  $R^3$  variable position - instant claim 50).

***Finding of prima facie obviousness--rational and motivation (MPEP***

***S2142-2413)***

MPEP 2144.09, second paragraph, states compounds which are ... homologs... are generally of sufficiently close structural similarity that there is a presumed expectation that such compounds possess similar properties." In re Wilder, 563 F.2d 457, 195 USPQ 426 (CCPA 1977). Therefore, to those skilled in chemical art, one homologue is not such an advance over adjacent member of series as requires invention because chemists knowing properties of one member of series would in

general know what to expect in adjacent members. *In re Henze*, 85 USPQ 261 (1950).

One skilled in the art would thus be motivated to prepare homologs of the compounds taught in Johnson et al. to arrive at the instant claimed products with the expectation of obtaining additional beneficial products which would be useful as, for example, an anti-arrhythmic agent.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first

reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

This application contains claims 59-83 drawn to an invention nonelected with traverse in the reply filed on May 20, 2009. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Any inquiry concerning this communication or earlier communications from the examiner should be

directed to Laura L. Stockton whose telephone number is (571) 272-0710. The examiner can normally be reached on Monday-Friday from 6:00 am to 2:30 pm. If the examiner is out of the Office, the examiner's supervisor, Joseph McKane, can be reached on (571) 272-0699.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

The Official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

/Laura L. Stockton/  
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